



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201219039

JAN 31 2012

T:EP:RA:T3

U.I.L. 408.03-00

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Legend:

Taxpayer A	= XXXXXXXXXXXXXXXXXXXXXXXX
Individual B	= XXXXXXXXXXXXXXXXXXXXXXXX
IRA X	= XXXXXXXXXXXXXXXXXXXXXXXX
IRA Y	= XXXXXXXXXXXXXXXXXXXXXXXX
Bank F	= XXXXXXXXXXXXXXXXXXXXXXXX
Bank B	= XXXXXXXXXXXXXXXXXXXXXXXX
Amount D	= XXXXXXXXXXXXXXXXXXXXXXXX
Amount C	= XXXXXXXXXXXXXXXXXXXXXXXX
Amount E	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 1	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 2	= XXXXXXXXXXXXXXXXXXXXXXXX
Date 3	= XXXXXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxx:

This is in response to a request dated xxxxxxxx, as supplemented by correspondence dated xxxxxxxx, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 89, represents that she received distributions from IRA X and IRA Y totaling Amount E. Taxpayer A asserts that her failure to accomplish a timely rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a non-IRA certificate of deposit (CD) opened by Bank B rather than an IRA CD as Taxpayer A intended.

Taxpayer A's husband, Individual B who passed away on Date 1, established IRA X and IRA Y CDs with Bank F prior to his death. On Date 2 when the CDs reached their maturity date, Taxpayer A withdrew funds totaling Amount E from IRA X and IRA Y. On Date 3 Taxpayer A went to Bank B with the intent to rollover Amount E into a new IRA CD at Bank B within the 60 day rollover period.

Taxpayer A is inexperienced with managing her investment accounts, as they were solely handled by her husband. Taxpayer A relied on Bank B to roll over Amount E into the same type of IRA accounts that her husband had, and was not aware that the funds were inadvertently rolled over into a non-IRA CD. Taxpayer A believed that the CD was an IRA CD.

Taxpayer A did every thing necessary to effect the desired rollover to an IRA within the 60 day rollover period and she believed that the rollover had been completed.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D (Amount E less Amount C, the amount of the 2010 required minimum distribution).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount E was caused by Bank B opening a non-IRA CD rather than an IRA CD as Taxpayer A intended.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D (Amount E less Amount C). You are granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being forwarded to your authorized representative pursuant to a Power of Attorney on file in this office.

If you wish to inquire about this ruling, please contact xxxxxxxxxxxxxxxx,
SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxx.

Sincerely yours,



Ada Perry
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of letter ruling
Notice of Intention to Disclose

Cc: xxxxxxxxxxxxxxxxxxxxxxxx